



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-959]

Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same

Commission Determination to Review in Part an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") (Order No. 42) of the presiding administrative law judge ("ALJ") granting complainant's motion for summary determination of violation of section 337.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information

concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), on June 25, 2015, based on a complaint filed by Pacific Bioscience Laboratories, Inc. of Redmond, Washington ("PBL"). 80 FR 36576-77 (Jun. 25, 2015). The amended complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric skin care devices, brushes and chargers therefor, and kits containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,320,691 and 7,386,906, and U.S. Design Patent No. D523,809. The complaint further alleges violations of section 337 by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The complaint named numerous respondents. The Commission's Office of Unfair Import Investigations was named as a party.

During the course of the investigation, eight of the respondents were terminated by consent order: Nutra-Luxe M.D., LLC of Fort Myers, Florida (Order No. 10) (consent order issued Jan. 5, 2016); SkincarebyAlana of Dana Point, California (Order No. 11) (consent order

issued Oct. 6, 2015); Unicos USA, Inc. of LaHabra, California (Order No. 15) (consent order issued Oct. 20, 2015); H2PRO Beautylife, Inc. of Placentia, California (Order No. 19) (consent order issued Oct. 22, 2015); Jewlzie of New York, New York (Order No. 20) (consent order issued Oct. 22, 2015); Home Skinovations Inc. of Richmond Hill, Ontario, Canada, and Home Skinovations Ltd. of Yokneam, Israel (Order No. 30) (consent order issued Dec. 23, 2015); and Accord Media, LLC of New York, New York (Order No. 31) (consent order issued Dec. 23, 2015). Respondent RN Ventures Ltd. of London, United Kingdom, was terminated based on a settlement agreement (Order No. 36) (*not reviewed* Feb. 4, 2016). Respondents Michael Todd LP and MTTO LLC, both of Port St. Lucie, Florida, were also terminated based on a settlement agreement (Order No. 37) (*not reviewed* Mar. 3, 2016).

The remaining ten respondents were found in default: Coreana Cosmetics Co., Ltd. of Chungcheongnam-do, Republic of Korea; Flageoli Classic Limited of Las Vegas, Nevada; Serious Skin Care, Inc. of Carson City, Nevada; Shanghai Anzikang Electric Co., Ltd. of Shanghai, China; and Wenzhou Ai Er Electrical Technology Co., Ltd. of ZheJiang, China (Order No. 13) (*not reviewed*, as modified by Order No. 15, Oct. 20, 2015); ANEX Corporation of Seoul, Republic of Korea; Korean Beauty Co., Ltd. of Seoul, Republic of Korea; and Our Family Jewels, Inc. of Parker, Colorado (Order No. 18) (*not reviewed* Oct. 22, 2015); Beauty Tech, Inc. of Coral Gables, Florida (Order No. 24) (*not reviewed* Nov. 13, 2015); and Xnovi Electronic Co., Ltd. of Shenzhen, China (Order No. 32) (*not reviewed* Dec. 23, 2015) (collectively, “the defaulting Respondents”).

On February 18, 2016, complainant PBL filed a motion for summary determination of violation of Section 337 by the defaulting Respondents. The Commission investigative attorney (“IA”) filed a response in support of the motion. No other responses were filed.

On April 11, 2016, the ALJ issued an ID (Order No. 42) granting complainant’s motion and making recommendations regarding remedy and bonding. The IA filed a timely petition for review-in-part of the ID. No other party petitioned for review of the ID. Complainant PBL filed a response in support of the IA’s petition. No other responses were filed.

The Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID’s findings on the economic prong of the domestic industry requirement as to the patent-based allegations, all issues related to violation of the asserted trade dress, and to correct certain minor typographical errors. The Commission does not request any submissions on the issues under review.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party

should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy,

the public interest, and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration dates of each of the asserted patents, and state the HTSUS subheadings under which the accused articles are imported. Complainant is also requested to supply the names of known importers of the infringing articles. The written submissions and proposed remedial orders must be filed no later than the close of business on June 9, 2016. Reply submissions must be filed no later than the close of business on June 16, 2016. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 42. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-959") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission

and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: May 26, 2016.